

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RALPH STEGALL,

Petitioner,

v.

SHANE JACKSON,

Respondent.

CASE NO. 2:12-CV-12415
HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

**OPINION AND ORDER DIRECTING THE CLERK OF THE COURT TO
TRANSFER THE MOTION FOR A CERTIFICATE OF APPEALABILITY (Doc.
28) TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH
CIRCUIT AND DENYING AS MOOT THE APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF COSTS AND FEES ON APPEAL (Doc. 26)**

On November 30, 2017, this Court summarily denied petitioner's application for a writ of habeas corpus and further denied him a certificate of appealability. The Court granted petitioner leave to appeal *in forma pauperis*.

Petitioner has filed a notice of appeal with the United States Court of Appeals for the Sixth Circuit. Petitioner has also filed a motion for a certificate of appealability and a request for continued *in forma pauperis* status on appeal.

For the reasons that follow, the Court orders that petitioner's motion for a certificate of appealability be transferred to the United States Court of Appeals for the Sixth Circuit. Petitioner's request for continued *in forma pauperis* status is denied as moot.

This Court notes that the proper procedure when a district court denies a

certificate of appealability is for the petitioner to file a motion for a certificate of appealability before the appellate court in the appeal from the judgment denying the petition for writ of habeas corpus or the motion to vacate sentence. See *Sims v. U.S.*, 244 F. 3d 509 (6th Cir. 2001)(citing Fed. R.App. P. 22(b)(1)). Petitioner has apparently done so in this case, although he has filed his motion with the district court, rather than the Sixth Circuit. The Court, in the interests of justice, will order that petitioner's motion for a certificate of appealability be transferred to the United States Court of Appeals for the Sixth Circuit.

This Court has already granted petitioner leave to appeal *in forma pauperis*. It is unnecessary for petitioner to again obtain permission to proceed *in forma pauperis* on appeal. Petitioner's current motion to proceed *in forma pauperis* on appeal will therefore be denied as moot. See *McMillan v. McKune*, 16 F. App'x. 896, 897 (10th Cir. 2001).

IT IS ORDERED That:

(1) The Clerk of the Court transfer the motion for a certificate of appealability (Doc. # 28) to the United States Court of Appeals for the Sixth Circuit.

(2). The application to proceed without prepaying costs and fees on appeal (Doc. # 26) is DENIED AS MOOT.

s/Arthur J. Tarnow
HON. ARTHUR J. TARNOW
UNITED STATES DISTRICT COURT

DATED: January 10, 2018